IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 31 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIMALAYA INVESTMENTS PVT LTD - Applicant(s)

Versus

COMMISSIONER OF INCOME-TAX - Respondent(s)

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Appearance :
MR MK PATEL for applicant - assessee

MR MANISH R BHATT for respondent - revenue
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 26/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The following three questions have been referred under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the assessee :

> “(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance of commutation charges of Rs.4,44,258/- and in holding that the same was not business loss admissible either under section 28 or section 37 of the Act?
>
> (2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the alternative claim of the appellant to the effect that the same was allowable as deduction u/s 57(iii) of the Act?
>
> (3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the second alternative

argument of the appellant to the effect that the said amount represented capital loss u/s 45 of the I.T. Act, 1961 and ought to have been given full effect thereto?"

2.It is an admitted position between the learned advocates appearing on behalf of respective parties that the controversy stands concluded by a decision of this Court rendered today in case of Kailash Investments Pvt. Ltd. v. The Commissioner of Income Tax, Gujarat, II, Income Tax Reference No.297 of 1995, wherein identical three questions were referred. Therefore, it is not necessary to set out the facts and contentions in detail.

3.In the circumstances, for the reasons stated in the judgement rendered today in Income Tax Reference No.297 of 1995, it is held that the Tribunal was justified in rejecting the claims of the assessee and all the three questions are

answered in the affirmative i.e. in favour of the revenue and against the assessee. The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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